

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 50 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements?No

2. To be referred to the Reporter or not?
No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

MAHENDRAKUMAR KANTILAL

VAKHARIA

Versus

BIPINCHANDRA VADILAL SHAH

Appearance:

MR SANJAY M AMIN for Petitioner

MR HARSHAD G SHAH for Respondent No. 1

Mr. S.A. Pandya, APP, for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/04/98

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned Additional Government Pleader, Mr. S.A. Pandya, for respondent No.2 and learned advocate Mr. H.G. Shah for respondent No.1. By the consent of the learned advocates for the parties, this Special Criminal Application is taken up for final hearing.

The petitioner approached this Court, by way of filing this Special Criminal Application, under Article 226 of the Constitution of India, challenging the judgment and order dated November 15, 1997, passed by the learned Additional Sessions Judge, Kheda, at Nadiad, in Criminal Revision Application No.84 of 1997, by which, the learned Additional Sessions Judge confirmed the order dated April 24, 1997, passed by the learned Judicial Magistrate (First Class), Petlad, below application (Exh.4), in Criminal Case No.598/97, rejecting the application filed by the petitioner for discharge.

Respondent No.1 filed Criminal Case No.598 of 1997 in the court of the learned Judicial Magistrate (First Class), Petlad, against the petitioner, for the offence punishable under Section 138 of the Negotiable Instruments Act ('Act' for short). The learned Magistrate has issued process, against which, the petitioner filed an application (Exh.4) for discharge before the learned Magistrate, inter alia, contending that statutory notice as per the provisions of Section 138(b) of the Act was not served on him. The learned Magistrate rejected the said application of the petitioner. Therefore, the petitioner filed Criminal Revision Application No.84 of 1997 in the court of the learned Additional Sessions Judge, Kheda, at Nadiad, which was also rejected by order dated November 15, 1997.

At time of admission/hearing of the present petition, Record & Proceedings from the lower court were called for by this Court.

Heard the learned advocates for the parties.

Both the courts below have given concurrent finding that the petitioner had sufficient notice about the dishonour of cheques. In my opinion, there is no ground made out for interference by this Court under Article 226 of the Constitution of India. I do not find any substance in this application and the same is rejected. Rule is discharged.

(swamy)